

ORDINANCE 2013-01

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND, A MARYLAND MUNICIPAL CORPORATION, AMENDING CHAPTER 26 OF THE TOWN CODE BY ADDING ARTICLE V THERETO FOR THE PURPOSE OF ESTABLISHING A STORMWATER UTILITY DEPARTMENT UNDER THE DIRECTION AND SUPERVISION OF THE WATER RESOURCES DEPARTMENT AND FURTHER ESTABLISHING A STORMWATER MANAGEMENT UTILITY FEE SYSTEM

NOW THEREFORE, BE IT ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND AS FOLLOWS:

STORMWATER
CHAPTER 26

ARTICLE V. ESTABLISHMENT OF STORMWATER UTILITY
DEPARTMENT AND A STORMWATER MANAGEMENT UTILITY FEE
SYSTEM

§ 26-260 FINDINGS.

(A) THE TOWN MAINTAINS A SYSTEM OF STORM AND SURFACE WATER MANAGEMENT FACILITIES INCLUDING, BUT NOT LIMITED TO, INLETS, CONDUITS, MANHOLES, CHANNELS, DITCHES, DRAINAGE EASEMENTS, RETENTION AND DETENTION BASINS, INFILTRATION FACILITIES, AND OTHER COMPONENTS AS WELL AS NATURAL WATERWAYS.

(B) THE STORMWATER SYSTEM IN THE TOWN NEEDS TO BE UPGRADED, IMPROVED AND REGULARLY MAINTAINED.

(C) WATER QUALITY IS DEGRADING DUE TO EROSION AND THE DISCHARGE OF NUTRIENTS, METALS, OIL, GREASE, TOXIC MATERIALS AND OTHER SUBSTANCES INTO AND THROUGH THE STORMWATER SYSTEM.

(D) THE PUBLIC HEALTH SAFETY AND WELFARE IS ADVERSELY AFFECTED BY POOR AMBIENT WATER QUALITY AND EXTREME FLOODING THAT RESULTS FROM INADEQUATE MANAGEMENT OF BOTH THE QUALITY AND QUANTITY OF STORMWATER.

(E) ALL REAL PROPERTY IN THE TOWN USES AND BENEFITS FROM THE MAINTENANCE OF THE STORMWATER SYSTEM.

(F) THE EXTENT OF THE USE OF THE STORMWATER SYSTEM BY EACH PROPERTY IS DEPENDENT ON FACTORS THAT INFLUENCE RUNOFF, INCLUDING LAND USE AND THE AMOUNT OF IMPERVIOUS SURFACE ON THE PROPERTY.

(G) THE COSTS OF IMPROVING, MAINTAINING, OPERATING AND MONITORING THE STORMWATER SYSTEM SHOULD BE ALLOCATED, TO THE EXTENT PRACTICABLE, TO ALL PROPERTY OWNERS BASED ON THE IMPACT OF RUNOFF FROM THE IMPERVIOUS AREAS OF THEIR PROPERTY ON THE STORMWATER MANAGEMENT SYSTEM.

(H) MANAGEMENT OF THE STORMWATER SYSTEM TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE REQUIRES THE CREATION OF A STORMWATER UTILITY DEPARTMENT TO MONITOR, MAINTAIN, IMPROVE AND OVERSEE THE OPERATION OF THE STORMWATER UTILITY SYSTEM AND FURTHER REQUIRES THAT ADEQUATE REVENUES BE GENERATED TO PROVIDE FUNDING FOR THE OPERATION, IMPROVEMENT, MAINTENANCE AND MONITORING OF THE STORMWATER UTILITY SYSTEM. THEREFORE IT IS IN THE INTEREST OF THE PUBLIC TO FINANCE STORMWATER MANAGEMENT ADEQUATELY WITH A USER CHARGE SYSTEM THAT IS REASONABLE AND EQUITABLE SO THAT EACH USER OF THE SYSTEM PAYS TO THE EXTENT TO WHICH EACH USER CONTRIBUTES TO THE NEED FOR IT.

§ 26-261. AUTHORITY.

(A) AUTHORITY FOR THE CREATION OF A STORMWATER UTILITY DEPARTMENT IS CONFERRED ON THE MAYOR AND COUNCIL BY THE TOWN CHARTER SECTION C5-1(16).

(B) AUTHORITY FOR THE ADOPTION OF A SYSTEM OF CHARGES AND FEES TO FUND THE IMPLEMENTATION OF STORMWATER MANAGEMENT PROGRAMS IS CONFERRED ON THE MAYOR AND COUNCIL BY SECTION 4-204(D), ENVIRONMENTAL ARTICLE, ANNOTATED CODE OF MARYLAND, AS AMENDED.

§ 26-262. CREATION OF STORMWATER UTILITY DEPARTMENT.

A STORMWATER UTILITY DEPARTMENT IS HEREBY ESTABLISHED FOR THE PURPOSE OF MONITORING, MAINTAINING, IMPROVING AND OVERSEEING THE OPERATION OF THE STORMWATER UTILITY SYSTEM IN THE TOWN OF BERLIN. THE STORMWATER UTILITY DEPARTMENT SHALL PERFORM ITS FUNCTIONS UNDER THE DIRECTION AND SUPERVISION OF THE WATER RESOURCES DEPARTMENT AND THE TOWN ADMINISTRATOR.

§ 26-263. DEFINITIONS.

FOR PURPOSES OF THIS CHAPTER, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS INDICATED:

(A) EQUIVALENT RESIDENTIAL UNIT (ERU) RATE MEANS THE STORMWATER MANAGEMENT FEE CHARGED ON AN EQUIVALENT RESIDENTIAL UNIT (ERU). THE ANNUAL (FIXED YEAR) STORMWATER MANAGEMENT FEE FOR SINGLE FAMILY RESIDENTIAL PROPERTY IN THE TOWN EQUALS THE ERU RATE.

(B) EQUIVALENT RESIDENTIAL UNIT (ERU) MEANS THE MEDIAN IMPERVIOUS SURFACE AREA ASSOCIATED WITH A SINGLE FAMILY RESIDENTIAL PROPERTY IN THE TOWN.

(C) TOWN ADMINISTRATOR MEANS THE TOWN ADMINISTRATOR FOR THE TOWN OF BERLIN, MARYLAND OR HIS OR HER DESIGNEE.

(D) FEE OR STORMWATER MANAGEMENT FEE MEANS THE CHARGE ESTABLISHED UNDER THIS CHAPTER AND LEVIED ON OWNERS OF PARCELS OR PIECES OF REAL PROPERTY TO FUND THE COSTS OF STORMWATER MANAGEMENT AND OF OPERATING, MAINTAINING AND IMPROVING THE STORMWATER SYSTEM IN THE TOWN.

(E) FISCAL YEAR MEANS JULY 1 OF A CALENDAR YEAR TO JUNE 30 OF THE NEXT CALENDAR YEAR, BOTH INCLUSIVE.

(F) IMPERVIOUS SURFACE AREA MEANS THE NUMBER OF SQUARE FEET OF HORIZONTAL SURFACE COVERED BY BUILDINGS AND OTHER IMPERVIOUS SURFACES. ALL BUILDING MEASUREMENTS SHALL BE MADE BETWEEN EXTERIOR FACES OF WALLS, FOUNDATIONS, COLUMNS OR OTHER MEANS OF SUPPORT OR ENCLOSURE.

(G) IMPERVIOUS SURFACE MEANS A SURFACE AREA WHICH IS COMPACTED OR COVERED WITH MATERIAL THAT IS RESISTANT TO INFILTRATION BY WATER, INCLUDING, BUT NOT LIMITED TO, MOST CONVENTIONALLY SURFACED STREETS, ROOFS, SIDEWALKS, PATIOS, DRIVEWAYS, PARKING LOTS, SWIMMING POOLS AND ANY OTHER OILED, GRAVELED, GRADED, COMPACTED, OR OTHER SURFACE WHICH IMPEDES THE NATURAL INFILTRATION OF SURFACE WATER.

(H) NON-RESIDENTIAL PROPERTY MEANS PROPERTY OTHER THAN SINGLE-FAMILY RESIDENTIAL PROPERTY. SUCH PROPERTY SHALL INCLUDE, BUT NOT BE LIMITED TO, MULTI-FAMILY DWELLINGS, COMMERCIAL PROPERTY, INDUSTRIAL PROPERTY, PARKING LOTS, HOSPITALS, SCHOOLS, RECREATIONAL AND CULTURAL FACILITIES, HOTELS, OFFICES AND CHURCHES.

(I) PROPERTY OWNER MEANS THE PROPERTY OWNER OF RECORD AS LISTED IN THE STATE ASSESSMENT ROLL. A PROPERTY OWNER INCLUDES ANY INDIVIDUAL, CORPORATION, FIRM, PARTNERSHIP, OR GROUPS OF INDIVIDUALS ACTING AS A UNIT, AND ANY TRUSTEE, RECEIVER OR PERSONAL REPRESENTATIVE.

(J) SINGLE FAMILY RESIDENTIAL PROPERTY MEANS A PROPERTY WHICH SERVES THE PRIMARY PURPOSE, OR IS ZONED TO PROVIDE THE PRIMARY PURPOSE, OF PROVIDING A PERMANENT DWELLING UNIT AND WHICH IS CLASSIFIED AS RESIDENTIAL IN THE STATE ASSESSMENT ROLLS. TOWNHOUSES ARE INCLUDED IN THIS DEFINITION.

(K) STORMWATER MANAGEMENT FUND MEANS THE FUND CREATED BY THIS CHAPTER TO OPERATE, MAINTAIN, AND IMPROVE THE TOWN'S STORMWATER SYSTEM.

(L) STORMWATER MANAGEMENT MEANS THE PLANNING, DESIGN, CONSTRUCTION, REGULATION, IMPROVEMENT, REPAIR, MAINTENANCE AND OPERATION OF FACILITIES AND PROGRAMS RELATING TO WATER, FLOOD PLAINS, FLOOD CONTROL, GRADING, EROSION, TREE CONSERVATION AND SEDIMENT CONTROL.

(M) STORMWATER SYSTEM MEANS THE SYSTEM OR NETWORK OF STORM AND SURFACE WATER MANAGEMENT FACILITIES INCLUDING BUT NOT LIMITED TO INLETS, CONDUITS, MANHOLES, CHANNELS, DITCHES, DRAINAGE EASEMENTS, RETENTION AND DETENTION BASINS, INFILTRATION FACILITIES, AND OTHER COMPONENTS AS WELL AS ALL NATURAL WATERWAYS.

§ 26-264. ESTABLISHMENT OF STORMWATER MANAGEMENT FUND.

(A) THE STORMWATER MANAGEMENT PROGRAM IS ESTABLISHED AND THE STORMWATER SYSTEM IS PROVIDED TO PROTECT THE WATERWAYS AND LAND IN THE TOWN BY CONTROLLING FLOODING AND TO PROTECT THE NATURAL ENVIRONMENT. THE COSTS OF DESIGNING, DEVELOPING, IMPROVING, OPERATING, MAINTAINING, AND MONITORING THE STORMWATER SYSTEM REQUIRED IN THE TOWN SHOULD, THEREFORE,

BE ALLOCATED, TO THE EXTENT PRACTICABLE, TO ALL PROPERTY OWNERS BASED ON THEIR IMPACT ON THE STORMWATER SYSTEM. IN ORDER TO PROVIDE A REVENUE TO FUND THOSE COSTS AND TO FAIRLY ALLOCATE THOSE COSTS, A STORMWATER MANAGEMENT FUND ("THE FUND") IS ESTABLISHED.

(B) ALL REVENUES COLLECTED FROM THE STORMWATER MANAGEMENT FEE AND FROM GRANTS, PERMIT FEES AND OTHER CHARGES COLLECTED UNDER CHAPTER 26, STORMWATER MANAGEMENT, SHALL BE DEPOSITED TO THE FUND. THE COUNCIL MAY MAKE ADDITIONAL APPROPRIATIONS TO THE FUND. ALL DISBURSEMENTS FROM THE FUND SHALL BE FOR THE PURPOSES OF THE FUND AS SET FORTH IN SECTION 26-265.

§ 26-265. PURPOSES OF THE FUND.

THE FUND SHALL BE USED FOR THE FOLLOWING PURPOSES:

(A) THE ACQUISITION BY GIFT, PURCHASE, OR CONDEMNATION OF REAL AND PERSONAL PROPERTY, AND INTERESTS THEREIN, NECESSARY TO CONSTRUCT, OPERATE, AND MAINTAIN STORMWATER CONTROL FACILITIES.

(B) ALL COSTS OF ADMINISTRATION AND IMPLEMENTATION OF THE STORMWATER MANAGEMENT PROGRAM, INCLUDING THE ESTABLISHMENT OF REASONABLE OPERATING AND CAPITAL RESERVES TO MEET UNANTICIPATED OR EMERGENCY STORMWATER MANAGEMENT REQUIREMENTS.

(C) ENGINEERING AND DESIGN, DEBT SERVICE AND RELATED FINANCING EXPENSES, CONSTRUCTION COSTS FOR NEW FACILITIES, AND ENLARGEMENT OR IMPROVEMENT OF EXISTING FACILITIES.

(D) OPERATION AND MAINTENANCE OF THE STORMWATER SYSTEM.

(E) MONITORING, SURVEILLANCE, AND INSPECTION OF STORMWATER CONTROL DEVICES.

(F) WATER QUALITY MONITORING AND WATER QUALITY PROGRAMS.

(G) RETROFITTING DEVELOPED AREAS FOR POLLUTION CONTROL.

(H) INSPECTION AND ENFORCEMENT ACTIVITIES.

(I) BILLING AND ADMINISTRATIVE COSTS.

(J) OTHER ACTIVITIES WHICH ARE REASONABLY REQUIRED.

§ 26-266. STORMWATER MANAGEMENT FEE.

AN ANNUAL SERVICE CHARGE IS IMPOSED UPON ALL REAL PROPERTY IN THE TOWN, AS OF JULY 1 BILLING OF EACH FISCAL YEAR, AND SHALL BE BILLED MONTHLY, BEGINNING JULY 1, 2013, TO FUND STORMWATER MANAGEMENT PROGRAMS. THIS SERVICE CHARGE SHALL BE KNOWN AS THE STORMWATER MANAGEMENT FEE ("FEE"). ANY REAL PROPERTY ANNEXED INTO THE TOWN AFTER JULY 1 MAY BE SUBJECT TO A PARTIAL YEAR CHARGE. THE FEE IS BASED ON: (1) THE EXTENT TO WHICH EACH PROPERTY CREATES A NEED FOR

THE STORMWATER MANAGEMENT PROGRAM; (2) THE AMOUNT OF IMPERVIOUS AREA ON EACH PROPERTY; AND (3) THE COST OF IMPLEMENTING A STORMWATER MANAGEMENT PROGRAM.

§ 26-267. CLASSIFICATION OF PROPERTY FOR PURPOSES OF DETERMINATION OF THE STORMWATER MANAGEMENT FEE.

(A) FOR PURPOSES OF DETERMINING THE STORMWATER MANAGEMENT FEE, ALL PROPERTIES IN THE TOWN ARE CLASSIFIED INTO ONE OF THE FOLLOWING CLASSES:

- (1) SINGLE-FAMILY RESIDENTIAL PROPERTY; OR
- (2) NON-RESIDENTIAL PROPERTY.

(B) SINGLE-FAMILY RESIDENTIAL FEE. THE COUNCIL FINDS THAT THE INTENSITY OF DEVELOPMENT OF MOST PARCELS OF REAL PROPERTY IN THE TOWN CLASSIFIED AS SINGLE FAMILY RESIDENTIAL IS SIMILAR AND THAT IT WOULD BE EXCESSIVELY AND UNNECESSARILY EXPENSIVE TO DETERMINE PRECISELY THE SQUARE FOOTAGE OF THE IMPROVEMENTS (SUCH AS BUILDINGS, STRUCTURES, AND OTHER IMPERVIOUS AREA) ON EACH SUCH PARCEL. THEREFORE, ALL SINGLE FAMILY RESIDENTIAL PROPERTIES IN THE TOWN SHALL BE CHARGED A FLAT STORMWATER MANAGEMENT FEE, EQUAL TO THE ERU RATE, REGARDLESS OF THE SIZE OF THE PARCEL OR THE IMPROVEMENTS.

(C) NON-RESIDENTIAL PROPERTY FEE. THE FEE FOR NON-RESIDENTIAL PROPERTY IN THE TOWN SHALL BE THE ERU RATE MULTIPLIED BY THE NUMERICAL FACTOR OBTAINED BY DIVIDING THE TOTAL IMPERVIOUS SURFACE AREA (SQUARE FEET) OF THE PROPERTY BY ONE ERU UNIT. THE IMPERVIOUS SURFACE AREA FOR NON-RESIDENTIAL PROPERTY IS THE SQUARE FOOTAGE FOR THE BUILDINGS AND OTHER IMPROVEMENTS ON THE PROPERTY AS LISTED IN THE STATE ASSESSMENT ROLL. ALTERNATIVELY, AT THE SOLE DISCRETION OF THE TOWN ADMINISTRATOR, THE IMPERVIOUS SURFACE AREA OF NON-RESIDENTIAL PROPERTY MAY BE DETERMINED THROUGH SITE EXAMINATION, MAPPING INFORMATION, AERIAL PHOTOGRAPHS OR OTHER AVAILABLE INFORMATION. THE MINIMUM STORMWATER MANAGEMENT FEE FOR NON-RESIDENTIAL PROPERTY SHALL EQUAL THE ERU RATE FOR SINGLE FAMILY RESIDENTIAL PROPERTY.

§ 26-268. ERU RATE.

THE COUNCIL SHALL, BY RESOLUTION, ESTABLISH THE ANNUAL (FISCAL YEAR) ERU RATE FOR THE STORMWATER MANAGEMENT FEE. THE BASE RATE SHALL BE CALCULATED TO INSURE ADEQUATE REVENUES TO FUND THE COSTS OF STORMWATER MANAGEMENT AND TO PROVIDE FOR THE OPERATION, MAINTENANCE, AND CAPITAL IMPROVEMENTS OF THE STORMWATER SYSTEM IN THE TOWN.

§ 26-269. CHARGES FOR TAX-EXEMPT PROPERTIES.

THE COUNCIL FINDS THAT ALL REAL PROPERTY IN THE TOWN CONTRIBUTES TO RUNOFF AND EITHER USES OR BENEFITS FROM THE MAINTENANCE OF THE STORMWATER SYSTEM. ALL REAL PROPERTY IN THE TOWN, INCLUDING PROPERTY THAT IS EXEMPT FROM PROPERTY TAX BY TITLE 7 OF THE TAX-PROPERTY, ANNOTATED CODE OF MARYLAND, AS AMENDED, SHALL BE CHARGED THE FEE.

§ 26-270. ASSESSMENT NOTICES.

(A) THE TOWN ADMINISTRATOR SHALL FOR THE FISCAL YEAR BEGINNING JULY 1, 2013 ONLY, SEND ASSESSMENT NOTICES FOR THE FEE TO PROPERTY OWNERS OF NON-RESIDENTIAL PROPERTY PRIOR TO THE BILLING FOR THE FEE.

(B) THE NOTICE SHALL INCLUDE THE FOLLOWING INFORMATION:

(1) THE CLASSIFICATION OF THE PROPERTY FOR PURPOSES OF DETERMINING THE FEE;

(2) FOR PROPERTY CLASSIFIED AS NON-RESIDENTIAL PROPERTY:

(I) THE IMPERVIOUS SURFACE AREA OF THE PROPERTY; AND

(II) THE METHOD BY WHICH THE IMPERVIOUS SURFACE AREA OF THE PROPERTY WAS DETERMINED; THAT IS, WHETHER THE COMPUTATION OF THE IMPERVIOUS SURFACE AREA OF THE PROPERTY IS BASED ON INFORMATION IN THE STATE ASSESSMENT ROLL, SITE EXAMINATION, MAPPING INFORMATION, AERIAL PHOTOGRAPHS, OR OTHER AVAILABLE INFORMATION.

(3) THE AMOUNT OF THE ERU RATE (I.E., THE SINGLE FAMILY RESIDENTIAL FEE) AND, FOR NON-RESIDENTIAL PROPERTY, THE NUMBER OF ERU UNITS ON THE PROPERTY. IF THE NUMBER OF UNITS IS A FRACTION, IT SHALL BE ROUNDED TO THE NEXT HIGHEST WHOLE NUMBER.

§ 26-271. WHEN STORMWATER MANAGEMENT FEE PAYABLE; INTEREST AND PENALTIES; LIEN ON REAL PROPERTY.

(A) THE FEE THAT IS DUE ON A MONTHLY BASIS MUST BE PAID WITHIN 30 DAYS AFTER THE BILL IS MAILED OR ISSUED TO THE PROPERTY OWNER AND IS OVERDUE AFTER THAT DATE. AN OVERDUE FEE BEARS INTEREST AND PENALTIES AT THE RATE OF 1.5% FOR EACH MONTH OR FRACTION OF A MONTH THAT THE FEE IS OVERDUE.

(B) THE FEE, INCLUDING INTEREST AND PENALTIES, WHEN OVERDUE IS A LIEN ON REAL PROPERTY AND MAY BE COLLECTED IN THE SAME MANNER AS DELINQUENT REAL PROPERTY TAXES OR BY A SUIT AGAINST THE PROPERTY OWNER.

§ 26-272. REQUESTS FOR CORRECTION OF THE STORMWATER MANAGEMENT FEE.

(A) A PROPERTY OWNER MAY REQUEST CORRECTION OF THE FEE BY SUBMITTING THE REQUEST IN WRITING TO THE TOWN ADMINISTRATOR AFTER THE DATE THE ASSESSMENT NOTICE OR THE BILL IS MAILED OR ISSUED TO THE PROPERTY OWNER. GROUNDS FOR CORRECTION OF THE FEE INCLUDE:

(1) INCORRECT CLASSIFICATION OF THE PROPERTY FOR PURPOSES OF DETERMINING THE FEE;

(2) ERRORS IN THE SQUARE FOOTAGE OF THE IMPERVIOUS SURFACE AREA OF THE PROPERTY;

(3) MATHEMATICAL ERRORS IN CALCULATING THE FEE TO BE APPLIED TO THE PROPERTY; AND

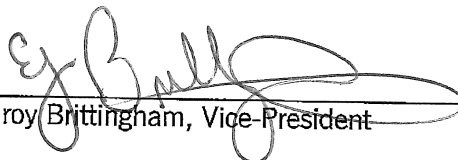
(4) ERRORS IN THE IDENTIFICATION OF THE PROPERTY OWNER OF A PROPERTY SUBJECT TO THE FEE.

(B) THE TOWN ADMINISTRATOR SHALL MAKE A DETERMINATION WITHIN 30 DAYS AFTER RECEIPT OF THE PROPERTY OWNER'S COMPLETED WRITTEN REQUEST FOR CORRECTION OF THE FEE. THE TOWN ADMINISTRATOR'S DECISION ON A REQUEST FOR CORRECTION OF THE FEE SHALL BE FINAL.

(C) A PROPERTY OWNER MUST COMPLY WITH ALL RULES AND PROCEDURES ADOPTED BY THE TOWN WHEN SUBMITTING A REQUEST FOR CORRECTION OF THE FEE AND MUST PROVIDE ALL INFORMATION NECESSARY FOR THE TOWN ADMINISTRATOR TO MAKE A DETERMINATION ON A REQUEST FOR CORRECTION OF THE FEE. IF A PROPERTY OWNER ALLEGES AN ERROR UNDER SECTION 26-272(A)(2), THEN THE REQUEST FOR CORRECTION MUST INCLUDE A CERTIFICATION BY A REGISTERED ENGINEER OR PROFESSIONAL LAND SURVEYOR OF THE IMPERVIOUS SURFACE AREA OF THE PROPERTY. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION SHALL BE GROUNDS FOR DENIAL OF THE REQUEST.

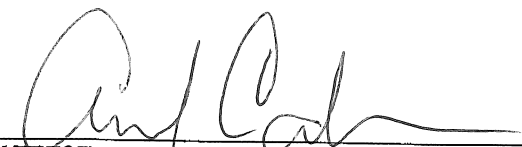
THIS ORDINANCE was introduced and read at a meeting of the Town Council held on the 14th day of January, 2013, and thereafter a statement of the substance of the Ordinance having been published as required by law was finally passed by the Town Council on the 28th day of January, 2013.

Adopted and effective this 28th day of January, 2013 by the Mayor and Council of the Town of Berlin, Maryland, by affirmative vote of 5 to 0 opposed, with 0 abstaining.


Elroy Brittingham, Vice-President

Approved and effective this 28th day of January, 2013 by the Mayor of the Town of Berlin.


Wm. Gee Williams, Mayor


ATTEST: Anthony Carson, Town Administrator